

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

SEP 27 2007

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DENVER W. CHRISTOPHER and RICHARD PISANO JR.

Application No. 10/062,561

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on September 17, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

EXAMINER'S ANSWER

Evidence Relied Upon

On January 10, 2006, an Examiner's Answer was mailed. A review of the Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). In the "Evidence Relied Upon" (section 8), it is indicated that "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal".

Application No. 10/062,561

This section should identify the prior art relied upon to reject the claims on appeal. In accordance with MPEP § 1207.02, the “Evidence Relied Upon” (section 8) should include:

(8) Evidence Relied Upon

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

To remedy this error and before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. Appropriate correction is required.

APPEAL BRIEF

Summary of Claimed Invention

The content under the heading “**SUMMARY OF CLAIMED SUBJECT MATTER**” contained in the Appeal Brief filed on September 22, 2005 does not provide a sufficient summary of the independent claims involved in the appeal, which, for each independent claim involved in the appeal, shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. *See* 37 CFR § 41.37(c)(1)(v). In particular, the appellant did not map the independent claims to the specification. Correction is required. MPEP § 1205.03 states:

When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office’s requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner for appropriate action on the following:

- 1) issue and mail a PTOL-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2) notify appellant to file a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 3) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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